



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 96-2-29

SERVED FEBRUARY 23, 1996

Issued by the Department of Transportation
on the 16th day of February, 1996

Essential air service at

**VERNAL, UTAH
CEDAR CITY, UTAH**

Docket 40505

under 49 U.S.C. 41731 *et seq.*

ORDER TO SHOW CAUSE

Summary

By this order, the Department is tentatively reselecting SkyWest Airlines, Inc., to provide subsidized essential air service at Vernal and Cedar City, Utah, for the two-year period beginning November 27, 1995, and ending December 27, 1997. The order sets annual subsidy rates of \$194,466 for Vernal and \$292,882 for Cedar City, and requests objections or competing proposals from other interested carriers.

Background

By Order 93-9-16, September 14, 1993, the Department selected SkyWest Airlines to provide subsidized essential air service at Vernal and Cedar City, Utah, for the two-year period through September 30, 1995. Specifically, SkyWest was selected to provide each community with three nonstop round trips each service day to Salt Lake City with 19-seat Metro III aircraft. Annual subsidy for this service was set at \$305,311 for Vernal and \$503,354 for Cedar City. (See Appendix A for a map.)

Under our normal procedures when nearing the end of a subsidy rate term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. We usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting it for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order; if any such proposals are filed, we process them as a competitive case. Consistent with this practice, we invited SkyWest to submit a proposal for the continuation of its essential air service at the communities.

Budget Considerations

Congress recently appropriated \$22.6 million for the Essential Air Service Program for fiscal year 1996, representing a one-third reduction from the previous year's appropriation of \$33.4 million. As discussed in more detail in Order 95-11-28, effective November 27, 1995, the Department's reduced funding requires that we subsidize only two round trips a day, five days a week to one hub for every subsidized community in the program. In this case, Vernal and Cedar City are limited to only two nonstop round trips a day, five days a week, to Salt Lake City.

Carrier Proposal

SkyWest submitted a proposal to continue providing essential air service at Vernal and Cedar City. As a result of discussions with Department staff, SkyWest has agreed to provide each community with two round trips a day, five days a week, to Salt Lake City with 30-seat Embraer Brasilia aircraft at annual subsidy rates of \$194,466 for Vernal and \$292,882 for Cedar City.¹

Tentative Reselection

After a thorough review of SkyWest's proposal and its recent service history, we have tentatively decided to reselect the carrier to serve Vernal and Cedar City for the two-year period beginning November 27, 1995, at the agreed subsidy rates, notwithstanding the use of larger aircraft. SkyWest has been phasing out its 18-seat Metro aircraft for the past year to the point where it operates nothing smaller than 30-seaters into its Salt Lake City hub.² These rates appear reasonable for the service to be provided, the service meets the requirements for essential air service as modified by Order 95-11-28, and SkyWest's performance continues to be reliable.

Carrier Fitness

49 U.S.C. 41738 requires that we find an air carrier fit, willing and able to provide service before we may compensate it for essential air service. We last found SkyWest fit to provide scheduled passenger service as a commuter air carrier by Order 93-9-16, September 14, 1993. The Department has routinely monitored the carrier's continuing fitness, and no information has come to our attention that would lead us to question its fitness or its ability to operate in a reliable manner.

Objections or Proposals

We will give interested persons 20 days from the date of service of this order to show cause why we should not make final our tentative decision to reselect SkyWest to provide essential air service at Vernal and Cedar City at the subsidy rates discussed above. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague or unsupported objections.

¹ Appendix D contains details of SkyWest's compensation requirements.

² SkyWest's old rates expired on September 30, 1995. We have agreed to extend the old rates from October 1 through November 26, at which time the lower subsidy and service levels are effective.

Carriers interested in filing competing proposals, with or without subsidy requests, should file them within the 20-day period set for objections. At the end of that period, our staff will docket any competing proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. We will give full consideration to all proposals that are timely filed.

As noted above, the Department has funds available to fund only two round trips a day, five days a week to Salt Lake City, the communities' designated hub, or to any other appropriate near-by hub. According to our essential air service guidelines, service should be with 15-seat or larger aircraft.

In order to assist potential applicants in making their traffic and revenue projections, we have included historical traffic data for both communities in Appendix B. During the most recent 12-month period, through the third quarter of 1995, Vernal averaged 18.7 enplanements per service day and Cedar City averaged 19.6 enplanements per service day.

Procedures for Filing Proposals

For interested carriers unfamiliar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f), and discusses in detail the process of requesting proposals, conducting reviews of applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, a copy of Part 204 of our regulations (14 CFR 204), and schedules setting forth our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. (Section 204.4 describes the fitness information required of all applicants for authority to provide essential air service.) Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred. However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.³ Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free

³ The regulations applicable to each of these three areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants), implementing the Drug-Free Workplace Act of 1988; and (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

Community and State Comments

If we receive competing proposals, the communities and state are welcome to submit comments on the proposals at any time. Early in the proceeding, comments on the proposals' strengths and weaknesses would be particularly helpful, and the civic parties may also express a preference for a particular carrier, if they choose. In any event, after conducting rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.⁴

This order is issued under authority delegated in 49 CFR 1.56(i).

ACCORDINGLY,

1. The Department tentatively reselects SkyWest Airlines, Inc., to provide essential air service at Vernal and Cedar City, Utah, as described in Appendix C, for the period from November 27, 1995, through December 27, 1997;
2. The Department tentatively set the final rates of compensation for SkyWest Airlines, Inc., for the provision of essential air service at Vernal and Cedar City, Utah, as described in Appendix C, for the period from November 27, 1995, through December 27, 1997, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the ceilings set forth in Appendix C, and shall be determined by multiplying the subsidy-eligible departures and arrivals operated during the month times the following amounts:

Vernal	\$191.97
Cedar City	\$289.12

3. We direct SkyWest Airlines, Inc., to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

⁴ In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we allow the carrier to institute the service as proposed.

4. We find that SkyWest Airlines, Inc., continues to be fit, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at Vernal and Cedar City, Utah;

5. We direct SkyWest Airlines, Inc., and any other interested persons having objections to the selection of SkyWest Airlines to provide essential air service as described in ordering paragraph 1 above, at the rates set forth in ordering paragraph 2 above, to file such objections or competing service proposals no later than 20 days from the date of service of this order;⁵

6. If we receive objections or competing proposals within the 20-day period, SkyWest Airlines, Inc., will be compensated at the subsidy rates set forth in ordering paragraph 2 above as final rates until all objections are resolved;

7. We will afford full consideration to the matters and issues raised in any timely and properly filed objections and service proposals before we take further action.⁶ If no objections or competing service proposals are filed, all further procedural steps will be deemed waived and this order shall become effective on the twenty-first day after its service date; and

8. The Department sets final rates of compensation for SkyWest Airlines, Inc., for the provision of essential air service at Vernal and Cedar City, Utah, for the period from October 1, 1995, through November 26, 1995, payable for each arrival from and departure to Salt Lake City as follows:

Vernal	\$167.57 ⁷
Cedar City	\$276.26 ⁸

9. Subsidy payments under this order are subject to the availability of funds. If the Department terminates payments because of insufficient appropriated funds, then, at the end of the period for which the Department does make payments, the carrier may suspend the service provided for by this order without regard to any requirement for notice of such suspension; and

⁵ Objections should be filed with the Documentary Services Division, C-55, Room PL-401, Department of Transportation, 4007th Street, S.W., Washington, DC 20590. Proposals to provide essential air service should be filed with the Chief, EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6417-I, Department of Transportation, at the same address. Questions regarding filings in response to this order may be directed to Dennis J. DeVany at (202) 366-1061.

⁶ Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.

⁷ SkyWest's rate for Vernal of \$305,311, set by Order 93-9-16, divided by 1,822 departures.

⁸ SkyWest's rate for Cedar City of \$503,354, set by Order 93-9-16, divided by 1,822 departures.

10. We will serve copies of this order on the mayors and airport managers of Vernal and Cedar City, Utah, the Utah Department of Transportation, the Governor of Utah; SkyWest Airlines, Inc., and the parties listed in Appendix E.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*